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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,014	01/14/2004	Ed Schlusel	4738/003	3270

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GOTTLIEB RACKMAN & REISMAN PC  
270 MADISON AVENUE  
8TH FLOOR  
NEW YORK, NY 100160601

EXAMINER
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LEWIS, KIM M

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/757,014

Applicant(s)

SCHLUSSEL, ED

Examiner

Kim M. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 16-20 is/are rejected.
- 7) ☒ Claim(s) 14 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: Detailed Action.

## DETAILED ACTION

### ***Response to Amendment***

1. The amendment filed on 1/27/05 as been received and made of record in the application file wrapper. As requested, the amendments to the specification and claims 1, 10, 12 and 16 have been entered.

### ***Claim Rejections - 35 USC § 103***

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claim 1-3, 6, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,711,739 ("Fishbein").

As regards claim 1, Fishbein substantially discloses all features of the claimed invention. More specifically, as can be seen from Figs. 1 and 6, Fishbein discloses a strip (10) constructed from linen having a facing surface and a back surface and defined by a pair of end portions and a central portion with the central portion sized to overly a wound; an adhesive (14) substantially covering only said facing surfaces of said end

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portions. Fishbein also discloses perforations (62) in the central portion of Fig. 6 for ventilation, which may be desirable for the healing process (col. 4, lines 3-7).

Fishbein fails to explicitly teach that at least said central portion of said strip is made of a material having an air porosity of at least 50 cubic ft./min./sq. ft. Fishbein, however, is concerned with the breathability of the strip in that linen is chosen for the material of construction of the strip, which is breathable. Fishburn also provides the linen strip with perforations (62) to allow more air flow through the bandage for healing.

It would have been obvious to one having ordinary skill in the art to increase the air porosity to at least 50 cubic ft./min./sq. ft of the bandage by increasing the number of perforations or by increasing the size of the perforations to allow for maximum exchange of air flow through the strip in order to aid in the healing process

Additionally, the examiner concedes that air flow through the strip of applicant's instant invention is critical, however, considering applicant's disclosed **sweeping range** of at least 50 cubic ft./min/sq. ft. to 500 cubic ft./min/sq. ft., the examiner contends that the range is not critical since applicant has not provided any evidence of an unexpected result achieved by the use of a strip having a central portion constructed from a material having an air porosity of at least 50 cubic ft./min/sq. ft.

Regarding claim 2, as can be seen from Fig. 1, the end portions and the central portion of the strip of Fishbein are integrally formed.

As regards claim 3, linen is a fabric material.

As regards claim 6, Fishbein fails to teach release sheets. However, it would have been *prima facie* obvious to one having ordinary skill in the art to provide the strip

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of Fishbein with release sheets in order to protect the bandage prior to use. Such release strips are commonly known and used on adhesive products and the use of such requires only routine skill in the art.

As regards claim 16 and 17, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the strip of Fishbein with an air porosity of at least 150 cubic ft./min/sq. ft. or at least 250 cubic ft./min/sq. ft. depending upon the intended use.

4. Claim 4, 7-10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fishbein in view of DelStar Technologies, Inc.

As regards claim 4, Fishbein discloses the use of linen material and fails to teach a material selected from the group consisting of mesh netting, tricot fabric and double needle bar fabric. However, DelStar Technologies, Inc. discloses Delnet<sup>®</sup>, a mesh netting material, commonly used in wound care material. It would have been obvious to one having ordinary skill in the art to modify Fishbein by constructing the strip from Delnet<sup>®</sup>, a commonly used a facing for wound care products because it provides purity, high strength, non-stick properties, and controlled fluid or air porosity.

As regards claim 5, Delnet<sup>®</sup> is made from a unique extrusion, embossing, and orientation process, thereby being molded.

Regarding claims 7-10 and the "spacer fabric material", absent a definition in the specification an/or claims, which clearly defines the "spacer fabric material", the examiner contends that Delnet<sup>®</sup>, which can be manufactured to have any fluid or air

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porosity, including between 500 and 500 cubic ft./min./sq. ft. is a spacer fabric material depending upon its intended use.

As regards claim 20, DelStar Technologies, Inc. is silent as to the denier of their fabric. Absent a critical teaching and/or a showing of unexpected results derived from the use of a material having a fineness of between 15 and 500 denier, the examiner contends that it would have been an obvious design choice to one having ordinary skill in the art to manufacture Delnet®, with a fineness of 15 to 500 depending upon the intended use.

5. Claims 11-13, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fishbein in view of U.S. Patent No. 3,625,209 ("Clark").

As regards claim 11, 13 and 19, Fishbein is silent as to gauze material. Clark, however, teaches it is conventional to construct bandages from gauze material, which have layers transverse and longitudinally extending yarns (note the folded configuration which makes up the layers).

In view of Clark, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the linen of Fishbein for the gauze material as an obvious design choice since gauze is a well known and used in the wound dressings and bandages.

As regards claim 12, Clark is silent as to the air porosity of the gauze material. Absent a critical teaching and/or a showing of unexpected results derived from the use of gauze having an air porosity of at least 250 cubic ft./min./sq. ft., the examiner

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contends that the range is not critical, and one having ordinary skill in the art would have found it an obvious design choice to use a gauze material having an air porosity that allows the user's skin to breath.

As regards claim 18, the gauze of Clark is inherently stretchable based upon the weave of the material.

#### ***Allowable Subject Matter***

6. Claims 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

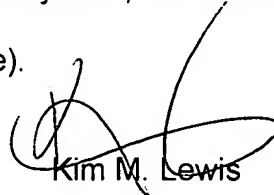
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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kim M. Lewis



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Primary Examiner  
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kml  
April 18, 2005